

**Final Order Denying Refund: 01-20191496
Individual Income Tax
For the Year 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Individual could not prove that the Department improperly denied his refund claim.

ISSUES

I. Individual Income Tax–Withholding.

Authority: IC § 6-3-4-8; IC § 6-8.1-5-1; *Indiana Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the denial of his refund of individual income tax.

II. Tax Administration–Collection Fees.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; *P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051 (Ind. Tax Ct. 2006).

Taxpayer protests the Department's refund denial of collection fees.

STATEMENT OF FACTS

Taxpayer is an individual who lives in Indiana but worked in a neighboring state during tax year 2013. Taxpayer's employers withheld Indiana and Illinois state and county income taxes from Taxpayer's wages. Taxpayer filed a federal income tax return but did not file an Indiana return. The Indiana Department of Revenue ("Department") determined that Taxpayer owed Indiana individual income tax. The Department issued a "best information available" assessment (the "BIA Assessment") for the estimated withholding tax due. Taxpayer did not protest the BIA Assessment. As a result of Taxpayer's lack of a protest and failure to file an actual return, the BIA Assessment advanced to a demand notice and eventually to a tax warrant.

Taxpayer paid the assessment including base tax, interest, penalty, and collection fees. Taxpayer filed a refund claim for a portion of the base tax and collection fees incurred by the Department, in addition to penalties, and interest paid. The Department granted a refund of \$296.06 representing overstatement of BIA tax, penalties, and interest, but denied the \$930.45 portion representing the collection fees and additional income tax due. Taxpayer protests the denial of his claim for refund. An administrative hearing was held, and this Final Order results. Additional facts will be provided as necessary.

I. Individual Income Tax–Withholding.

DISCUSSION

Taxpayer protests the refund denial of Indiana income tax for the tax year 2013. The Department assessed individual income tax, on February 26, 2018. The liability staged to warrant on June 7, 2018. The Department's collection agent received payment in the amount of \$1,199.51 and remitted it to the Department on August 10, 2018. The Department applied \$1,011.82 to the tax, penalty, and interest owed, and the remaining \$187.82 was deemed collection fees paid to the Department's collection agency. Taxpayer filed a 2013 Indiana individual income tax return September 2018. This return had a federal adjusted gross income of \$2,385 and requested a

refund of \$34. In November Taxpayer also filed a separate 2013 Indiana individual income tax return with a federal adjusted gross income of \$24,634 and requested a refund of \$529.

As a threshold issue, it is the taxpayers' responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E. 2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

IC § 6-3-4-8 provides in relevant part:

(a) Except as provided in subsection (d), every employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department. *The department shall base its withholding instructions on the adjusted gross income tax rate for persons, on the total local income tax rate that the taxpayer is subject to under IC 6-3.6, and on the total amount of exclusions the taxpayer is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4).* However, the withholding instructions on the adjusted gross income of a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) are to be based on applying not more than one (1) withholding exclusion, regardless of the total number of exclusions that *IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4)* permit the taxpayer to apply on the taxpayer's final return for the taxable year. Such employer making payments of any wages:

- (1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from the individual's wages and paid over in compliance or intended compliance with this section; and
- (2) shall make return of and payment to the department monthly of the amount of tax which under this article and *IC 6-3.6* the employer is required to withhold.

(b) An employer shall pay taxes withheld under subsection (a) during a particular month to the department no later than thirty (30) days after the end of that month. However, in place of monthly reporting periods, the department may permit an employer to report and pay the tax for a calendar year reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed one thousand dollars (\$1,000). An employer using a reporting period (other than a monthly reporting period) must file the employer's return and pay the tax for a reporting period no later than the last day of the month immediately following the close of the reporting period.

(c) For purposes of determining whether an employee is subject to taxation under *IC 6-3.6*, an employer is entitled to rely on the statement of an employee as to the employee's county of residence as represented by the statement of address in forms claiming exemptions for purposes of withholding, regardless of when the employee supplied the forms. Every employee shall notify the employee's employer within five (5) days after any change in the employee's county of residence.

(d) A county that makes payments of wages subject to tax under this article:

- (1) to a precinct election officer (as defined in *IC 3-5-2-40.1*); and
- (2) for the performance of the duties of the precinct election officer imposed by *IC 3* that are performed on election day;

is not required, at the time of payment of the wages, to deduct and retain from the wages the amount prescribed in withholding instructions issued by the department.

(e) Every employer shall, at the time of each payment made by the employer to the department, deliver to the department a return upon the form prescribed by the department showing:

- (1) the total amount of wages paid to the employer's employees;
- (2) the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code;
- (3) the amount of adjusted gross income tax deducted therefrom in accordance with the provisions of this section;
- (4) the amount of income tax, if any, imposed under *IC 6-3.6* and deducted therefrom in accordance with this section; and
- (5) any other information the department may require.

Every employer making a declaration of withholding as provided in this section shall furnish the employer's employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the total amount of adjusted gross income tax and the amount of each income tax, if any, imposed under [IC 6-3.6](#), withheld from the employees, on the forms prescribed by the department. In addition, the employer shall file Form WH-3 annual withholding tax reports with the department not later than thirty-one (31) days after the end of the calendar year.

(f) All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under the provisions of this article shall hold the same in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided in this article. Any employer may be required to post a surety bond in the sum the department determines to be appropriate to protect the state with respect to money withheld pursuant to this section.

(g) The provisions of [IC 6-8.1](#) relating to additions to tax in case of delinquency and penalties shall apply to employers subject to the provisions of this section, and for these purposes any amount deducted or required to be deducted and remitted to the department under this section shall be considered to be the tax of the employer, and with respect to such amount the employer shall be considered the taxpayer. In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes, shall be personally liable for such taxes, penalties, and interest.

(h) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for the employee's taxable year which begins in such calendar year, and a return made by the employer under subsection (b) shall be accepted by the department as evidence in favor of the employee of the amount so deducted from the employee's wages. Where the total amount so deducted exceeds the amount of tax on the employee as computed under this article and [IC 6-3.6](#), the department shall, after examining the return or returns filed by the employee in accordance with this article and [IC 6-3.6](#), refund the amount of the excess deduction. However, under rules promulgated by the department, the excess or any part thereof may be applied to any taxes or other claim due from the taxpayer to the state of Indiana or any subdivision thereof. In the event that the excess tax deducted is less than one dollar (\$1), no refund shall be made.

. . . .

(*Emphasis added*).

After review of the W-2s and other Department records, the Department disagrees with Taxpayer's reported Indiana state and local withholdings. According to the records provided by both the Department and Taxpayer, Taxpayer claimed a total of \$1,366 withholding credit based on his W2s, but the Department only granted \$216 of those credits. The remaining amount denied by the Department were out of state withholdings. According to one of Taxpayer's W2, he claimed \$1,231.76 as Indiana withholding, when in fact the W2 states it was Illinois state income withholding. Thus, the Department adjusted Taxpayer's withholding credits and only refunded him \$269.06. Taxpayer could not provide documentation to support his claim that he is entitled to the remaining amount requested.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Collection Fees.

If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b). The amount of the proposed assessment "is considered a tax payment not made by the due date" and is subject to penalties and interest. *Id.* Notice of the proposed assessment shall be sent to the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC § 6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty (60) day period "[t]he department shall demand payment, as provided in [IC 6-8.1-8-2\(a\)](#), of any part of the proposed tax assessment, interest, and penalties" IC § 6-8.1-5-1(j). In these situations, the Department "shall make the demand for payment in the manner provided in [IC 6-8.1-8-2](#)." IC § 6-8.1-5-1(k).

IC § 6-8.1-8-2 provides that the Department must issue a demand notice for payment which grants the taxpayer a ten (10) day period of time in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a). If a taxpayer "does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax

warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When it has issued a tax warrant, the Department may contract with a collection agency to collect delinquent tax plus interest, penalties, collection fees, and other fees and costs. IC § 6-8.1-8-4(a). Additionally, "a collection fee of ten percent (10 percent) of the unpaid tax is added to the total amount due." *Id.* When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e).

In this case, the liability advanced through the legally required procedures. Taxpayer failed to properly file his Indiana income tax return or protest the liability. The Department issued the proposed assessment on February 26, 2018. Taxpayer did not contact the Department until after June 2018. The Department incurred fees, \$187.69, based on the assessment that advanced to a tax warrant. The fees collected are proper if the fees were paid based on the information available to the Department at the time the fees are collected rather than at some time after collection. Additionally, the collection fees were not retained by the Department, and therefore, in the absence of Department error, the Department is not able to refund the collection fees.

In *P/S, Inc. v. Ind. Dep't of State Revenue*, the tax court concluded that the taxpayer was responsible for paying collection fees because it had not rebutted the presumption that it received the notices which the Department mailed. *P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051, 1054-55 (Ind. Tax Ct. 2006). The court ruled, "when an administrative agency sends notice through the regular course of mail, a presumption arises that such notice is received." *Id.* at 1054. The court further explained that the taxpayer in that case merely asserted that it had not received notice and that the Department had explained that it had not received the notices as returned mail. *Id.*

In this case, the Department followed the correct procedure regarding its collection process. The Department has determined that it neither erred in following the proper procedure, nor in failing to give proper notice. Taxpayer's protest of collection fees is denied.

FINDING

Taxpayer's protest is denied.

SUMMARY

As stated above, Taxpayer's refund claim of income tax was properly denied. In addition, the Taxpayer's protest of collection fees is denied.

April 14, 2020

Posted: 07/01/2020 by Legislative Services Agency

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